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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 MARY MARGRILL, LLC, and
13 MARY MARGRILL,

14 Plaintiffs,

15 vs.

16 BCBG MAX AZRIA GROUP, INC,
17 MACY'S INC, and TREBBIANO,
18 LLC,

19 Defendants.

) CASE NO.

) **COMPLAINT FOR TRADEMARK**
) **INFRINGEMENT**

) **DEMAND FOR JURY TRIAL**

20
21 For their Complaint, Plaintiffs MARY MARGRILL, LLC and MARY
22 MARGRILL hereby allege and assert as follows:

23
24 **I. JURISDICTION AND VENUE**

25
26 1. Plaintiffs bring this action for injunctive relief and damages arising out
27 of the unauthorized, unfair, and deceptive competitive practices of Defendants, and
28 each of them, in connection with the commercial use and exploitation of trademarks

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1 in violation of the Lanham Act.

2 2. This action arises under the Trademark Laws of the United States,
 3 including particularly, Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114
 4 and 1125. Jurisdiction is conferred on this Court by 15 U.S.C. Section 1121(a), by
 5 28 U.S.C. Section 1338(a), in that this case arises under the Trademark Laws of the
 6 United States, 15 U.S.C. Sections 1051, *et seq.*, and by principles of pendent
 7 jurisdiction. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) as
 8 Defendants transact business in Los Angeles County, California, and a substantial
 9 part of the events or omissions giving rise to the claim occurred within this District.

10 II. THE PARTIES

11
 12
 13 3. Plaintiff Mary Margrill, LLC (“MARY MARGRILL”) is a New York
 14 Limited Liability Company that sells its jewelry throughout the United States,
 15 including all of California and Los Angeles County.

16 4. Plaintiff Mary Margrill is an individual residing in New York, and is
 17 the registrant of the trademarks that defendants have infringed. Plaintiff Mary
 18 Margrill licenses these trademarks to MARY MARGRILL, LLC.

19 5. Defendant BCBG Max Azria Inc (“BCBG”) is upon information
 20 and belief a Delaware Corporation based in California and doing business in Los
 21 Angeles County and elsewhere throughout California and throughout the United
 22 States.

23 6. Defendant Macy’s, Inc. (“MACY’S”) is upon information and belief a
 24 Delaware Corporation based in Ohio and doing business in Los Angeles County
 25 and elsewhere throughout California and throughout the United States.

26 7. Defendant Trebbiano, LLC (“TREBBIANO”) is upon information and
 27 belief a New York company based in New York and doing business throughout the
 28 United States, including in Los Angeles and the rest of California, with defendants

1 MACY’S and BCBG.

2 3 III. FACTS GIVING RISE TO THIS ACTION 4

5 8. MARY MARGRILL is a pioneer in the world of jewelry for more than
6 20 years. MARY MARGRILL is best known as the founder of contemporary
7 spiritually inspired jewelry. MARY MARGRILL’s jewelry is worn by celebrities,
8 yogis, transformational leaders and the every day hero.

9 9. Plaintiffs brand is succinctly described on its www.marymargrill.com
10 website as follows: “Each handmade piece is created with exquisite attention to
11 detail and quality combined with the intention to attract, manifest and cause a
12 breakthrough in your biggest dreams and desires. Mary Margrill’s inspired pieces
13 are where mantras and powerful affirmations meet beautifully streamlined designs.
14 Whether you are looking for a gift to make an impact, a piece to commemorate a
15 special occasion, or a wonderful bauble with which to adorn yourself, consider the
16 ingenious designs by Mary Margrill today.”

17 10. Plaintiff Mary Margrill has been doing business as MARY
18 MARGRILL since at least 2001. On January 20, 2015, the U.S. Patent &
19 Trademark Office issued Trademark Registration Number 4675260 for the
20 trademark MARY MARGRILL to Mary Margrill for jewelry.

21 11. In 2006, Plaintiffs created and began selling a jewelry collection
22 entitled ANYTHING IS POSSIBLE. On April 8, 2014, the U.S. Patent &
23 Trademark Office issued Trademark Registration Number 4510416 for this
24 trademark to Mary Margrill for costume jewelry and jewelry.

25 12. Plaintiffs sell pieces from its ANYTHING IS POSSIBLE line on its
26 website, www.marymargrill.com for prices ranging from approximately \$200 to
27 \$2200 for pieces encrusted with diamonds and made in 14 karat gold.

28 13. Defendant BCBG and MACY have been selling counterfeit versions of

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1 Plaintiffs' ANYTHING IS POSSIBLE jewelry for prices as low as \$25. Attached
2 as Exhibit 1 is an example of such a counterfeit piece appearing on defendant
3 Macy's website.

4 14. According to Exhibit 2 a screenshot taken of defendant BCBG's
5 website, the item referred to in Exhibit 1 was so popular it sold out after being
6 offered for sale by Defendant BCBG for just \$12.50.

7 15. The counterfeiting by defendants resulted in actual confusion with not
8 just Plaintiffs' trademark ANYTHING IS POSSIBLE but also with Plaintiff
9 MARY MARGRILL, LLC and Plaintiff MARY MARGRILL herself as indicated
10 in Exhibit 3 showing a Youtube video of Plaintiff Mary Margrill apparently
11 sponsoring defendants' counterfeits.

12 16. As Exhibit 3 shows, defendants' counterfeiting and infringements have
13 caused confusion with Plaintiffs' trademark MARY MARGRILL in addition to the
14 ANYTHING IS POSSIBLE trademark.

15 17. When BCBG was confronted about their trademark infringement,
16 counsel for BCBG referred the matter to defendant TREBBIANO who refused to
17 recall the counterfeit items from the marketplace.

18 18. Defendants have pointed the finger of blame at each other, but the fact
19 remains they are joint tortfeasors in a conspiracy to violate the trademark rights of
20 Plaintiffs and each are guilty of counterfeiting.

21 19. Defendants wrongful acts and omissions have damaged both the
22 MARY MARGRILL brand and the ANYTHING IS POSSIBLE brand and spoiled
23 the market. Defendants wrongful acts and omissions have caused and continue to
24 cause consumers to think that Plaintiffs' jewelry is not of as high quality as it
25 actually is, and has damaged and continues to damage consumers' perception of
26 Plaintiffs' brands and products.

27 20. Plaintiffs sell MARY MARGRILL products to celebrities.
28 Celebrities, in general, do not want to buy cheap products. The only way to offset

1 the damage defendants have caused entails spending lots of money on corrective
2 advertising.

3 21. Plaintiffs, through counsel, have demanded that defendants remove all
4 references of their counterfeits and all counterfeit products from the internet and
5 from stores. Defendants have refused to do so.

6
7 COUNT I – VIOLATION OF LANHAM ACT 15 U.S.C. §1114

8 (Against All Defendants)
9

10 22. Plaintiffs re-allege the allegations in paragraphs 1 through 21.

11 23. Defendants have engaged in, and continue to engage in, the wrongful
12 exploitation of the aforementioned registered trademarks.

13 24. Defendants wrongful use of Plaintiffs' trademarks not only is *likely to*
14 *confuse* consumers as to the source and origin of defendants' goods but actually has
15 already caused *actual confusion* as to the source and origin of defendants' products.

16 25. Defendants' counterfeit jewelry branded as ANYTHING IS
17 POSSIBLE so closely resembles Plaintiffs' jewelry that the public is likely to be
18 confused and deceived, and to assume erroneously that defendants' jewelry is that
19 of Plaintiffs, or that defendants counterfeit products are in some way connected
20 with, sponsored by, or affiliated with Plaintiffs, all to Plaintiffs' detriment and
21 irreparable damage.

22 26. Defendants counterfeit products are not affiliated with, connected
23 with, endorsed by, or sponsored by Plaintiffs, nor have Plaintiffs approved or
24 authorized any of the goods or services offered or sold by defendants.

25 27. Plaintiffs have no control over the nature and quality of the goods
26 offered and sold by defendants or its licensees. Any failure, neglect, or default by
27 defendants or its licensees in providing such products will reflect adversely on
28 Plaintiffs as being the believed source of said failure, neglect, or default, thereby

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1 hampering Plaintiffs' efforts to continue to protect its outstanding reputation and
2 preventing Plaintiffs from further building its reputation. Said failure, neglect, or
3 default will result in loss of sales by Plaintiffs, and loss of value of Plaintiffs'
4 considerable expenditures to promote its goods and services under its MARY
5 MARGRILL and ANYTHING IS POSSIBLE brands, all to the irreparable harm of
6 Plaintiffs.

7 28. Defendants have committed trademark infringement of Plaintiffs'
8 trademarks in their deceptive marketing of jewelry using the ANYTHING IS
9 POSSIBLE brand name and in some instances the MARY MARGRILL brand
10 name.

11 29. Defendants have induced and enabled others to infringe Plaintiffs'
12 trademarks, and trade names.

13 30. Defendants have acted with bad intent and culpably in selecting,
14 using, and approving of the use of Plaintiffs' trademarks in the distribution,
15 marketing, promotion, advertisement, offering for sale, and sale of jewelry.

16 31. Defendants have promoted, advertised, offered for sale, and/or sold,
17 jewelry using the ANYTHING IS POSSIBLE trademark and in some cases the
18 MARY MARGRILL trademark through persons not authorized, employed by, or
19 associated in any way with Plaintiffs and have used the aforementioned trademarks
20 as a false designation and a false representation for jewelry.

21 32. None of the Defendants activities alleged in this complaint have been
22 authorized by Plaintiffs, and such unauthorized use by Defendants of Plaintiffs'
23 trademarks in interstate commerce, commerce substantially affecting interstate
24 commerce in this district, and elsewhere throughout the United States, constitutes
25 infringement and an inducement to infringe Plaintiffs' trademarks, and such
26 activities are likely to cause confusion, mistakes, and to deceive the public at large.

27 33. Upon information and belief, Defendants have acted with the
28 unlawful purpose of:

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- a. Improperly taking advantage of the valuable goodwill belonging to Plaintiffs;
- b. Soliciting Plaintiffs' customers and/or potential customers, attempting to sell, and selling to such customers and potential customers, jewelry marketed under the ANYTHING IS POSSIBLE brand name (and in some instances the MARY MARGRILL brand name) through persons not authorized by, employed by, or associated in any way with Plaintiffs;
- c. Inducing others to infringe Plaintiffs' trademarks; and
- d. Causing the goods of persons not authorized by, employed by, or associated in any way with Plaintiffs to be falsely represented as if they were rendered, authorized, sponsored by, endorsed by, or otherwise connected with Plaintiffs and its licensed trademarks.

34. Defendants' conduct, as alleged in this complaint, constitutes a violation of 15 U.S.C. § 1114.

35. If Defendants are allowed to continue marketing and selling the accused products, Plaintiffs will be damaged as alleged in this complaint, and the Defendants will profit thereby. Furthermore, unless the Court permanently enjoins Defendants' conduct as alleged in this complaint, Plaintiffs business, goodwill, and reputation will suffer irreparable injury of an insidious and continuing sort that cannot be adequately calculated and compensated in monetary damages.

36. Defendants' aforementioned acts and conduct are being done willfully and with an intent to ride on, and/or step on and demolish, the goodwill Plaintiffs have worked hard to develop. Plaintiff is therefore entitled to treble damages arising therefrom, as well as reimbursement of Plaintiffs' attorneys' fees and costs.

37. The intentional nature of defendants' acts makes this an exceptional case under 15 U.S.C. §1117(a).

1 POSSIBLE jewelry.

2 45. Defendants' aforesaid infringing conduct has been willful and
3 committed with an intent to ride on, and/or step on and demolish, the goodwill
4 Plaintiffs have worked hard to develop. Defendants' aforesaid infringing conduct
5 has been willful and with knowledge that the sale, marketing, advertisement, and
6 promotion of their jewelry will damage the goodwill of and hurt the prospects of
7 future commercial success of Plaintiffs' ANYTHING IS POSSIBLE and MARY
8 MARGRILL brands. Plaintiffs are therefore entitled to treble damages arising
9 therefrom, as well as reimbursement of Plaintiffs' attorneys' fees and costs.

10 11 12 **COUNT III**

13 **UNFAIR COMPETITION – COMMON LAW, AND CALIFORNIA**

14 **BUSINESS & PROFESSIONS CODE §§ 17200 et seq.**

15
16 46. Plaintiffs repeat each allegation contained in paragraphs 1 through 47
17 as though set forth herein at length.

18 47. Defendants have engaged in unfair competition perpetrated against
19 Plaintiffs by reason of the conduct alleged herein.

20 48. The unlawful and unfair conduct is injuring the goodwill of Plaintiffs.

21 49. Defendants are each liable for the unfair competition, and/or are
22 liable for aiding and abetting such conduct.

23 50. By this conduct, Plaintiffs have directly suffered injuries and each
24 Defendant has been unjustly enriched.

25 51. Plaintiffs are entitled to restitution, the recovery of damages, and the
26 recovery of the profits earned by Defendants by virtue of their conduct.

27 52. As a consequence of the unfair competition by Defendants, Plaintiffs
28 are suffering irreparable injury, by reason of which such conduct should be

1 enjoined.

2 53. Plaintiffs are entitled to reasonable attorneys' fees.

3 54. Plaintiffs are informed and believe, and on that basis allege, that the
4 aforementioned conduct of Defendants is willful, oppressive, fraudulent, and
5 malicious, and Plaintiffs are therefore entitled to punitive damages.

6
7 **COUNT IV**

8 **UNFAIR COMPETITION – COMMON LAW, CALIFORNIA BUSINESS &**
9 **PROFESSIONS CODE §§ 17500 et seq.**

10
11 55. Plaintiffs repeat each allegation contained in paragraphs 1 through 54
12 as though set forth herein at length.

13 56. Defendants' use of the words ANYTHING IS POSSIBLE in
14 association with jewelry, misrepresents the nature, characteristics, identity, and
15 source or sponsorship of Defendants' goods, constitutes aiding and abetting liability
16 for deceptive, untrue, and misleading advertising and therefore constitutes a
17 violation of, inter alia, California Business and Professions Code §§17500 et seq.
18 and California common law.

19 57. Defendants' uses are likely to deceive and will continue to deceive the
20 consuming public. Defendants knew, recklessly disregarded, or reasonably should
21 have known that such packaging, advertising, marketing, and promotion was untrue
22 and/or misleading.

23 58. As a result of the conduct described above, Defendants have been
24 and/or will be unjustly enriched at the expense of Plaintiffs and the general public.
25 The interests of the general public and Plaintiffs are, therefore, closely related.

26 59. If not enjoined, Defendants will be unjustly enriched, among other
27 things, by the receipt of sales revenues from consumers who mistakenly think that
28 they are purchasing one of Plaintiffs' pieces of jewelry, both in California and

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1 throughout the world, but instead would be purchasing Defendants' goods which
2 are promoted and sold through advertisements that affirmatively misrepresent,
3 either directly or by implication, the nature, characteristics, identity, and source or
4 sponsorship of the goods.

5 60. Pursuant to Business and Professions Code §§ 17203 and 17535,
6 Plaintiffs, on behalf of themselves and the general public, which is unable
7 effectively to assert its interests, seeks an order of this Court ordering Defendants
8 immediately to cease such support for acts of unfair competition and false
9 advertising, and enjoining Defendants from continuing to import or export,
10 distribute, market, promote, advertise, offer for sale, and sell, jewelry (or jewelry
11 accessories) branded with or promoted with the words ANYTHING IS POSSIBLE,
12 and from falsely advertising or conducting business via the unlawful, deceptive,
13 unfair or fraudulent business acts and practices, and the untrue and misleading
14 advertising complained of herein. Plaintiffs additionally request an order
15 disgorging Defendants' ill-gotten gains and restitution of all monies wrongfully
16 acquired by Defendants by means of their support of such acts of unfair
17 competition and false advertising, damages, interest and attorneys' fees.

18
19 WHEREFORE, Plaintiffs pray for judgment as follows:
20

21 1. That the Court adjudge and decree that Defendants have falsely
22 designated the origin of certain jewelry products as those of Plaintiffs, have made
23 and used false representations in connection with the sale, offering for sale,
24 promotion and advertising of such products, and have unfairly competed with
25 Plaintiffs at common law.

26 2. That the Court adjudge and decree that Defendants have infringed
27 Plaintiffs' registered ANYTHING IS POSSIBLE and MARY MARGRILL
28 trademarks for jewelry.

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3. That the Court permanently enjoin Defendants, its agents, servants, employees, attorneys, and all persons acting in concert or participation with them, or with any of them from:

- a. Using ANYTHING IS POSSIBLE, or MARY MARGRILL in connection with the sale, offering for sale, advertising, and/or promotion of jewelry or other related products;
- b. Selling, offering to sell, marketing, distributing, advertising and/or promoting any jewelry item with the words ANYTHING IS POSSIBLE or MARY MARGRILL displayed on the product, its packaging, advertising or promotional materials or on any website unless it is the genuine article sourced from Plaintiffs or Plaintiffs' representatives;
- c. Representing directly or indirectly by words or conduct that any piece of jewelry or accessory offered for sale, sold, promoted, or advertised by Defendants, is authorized, sponsored by, endorsed by, or otherwise connected with Plaintiffs unless the jewelry or accessory is in fact the genuine article sourced from Plaintiffs;
- d. Aiding or abetting in unfair competition against Plaintiffs;
- e. Aiding or abetting in false advertising; and
- f. Inducing others to engage in any of these aforementioned acts.

4. That the Court award an amount to be determined at trial but at least an amount equivalent to treble the amount of Defendants' illicit profits or Plaintiffs' lost profits, whichever is greater.

5. That the Court award Plaintiffs at least an additional \$500,000.00 to cover the cost of prospective corrective advertising.

6. That the Court award Plaintiffs at least an additional \$200,000.00 for its intentional counterfeiting of Plaintiffs' marks.

7. That the Court award Judgment against Defendants for the full costs of

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1 this action, including the attorney's fees reasonably incurred by Plaintiffs.

2 8. That the Court Order such other, further and different relief as the
3 nature of this action may require and as the Court may deem just and proper.

4 9. That the Court retain jurisdiction of this action for the purpose of
5 enabling Plaintiffs, in their discretion, to apply to this Court at any time for such
6 further orders and directions as may be necessary or appropriate for the
7 interpretation or execution of any Order entered in this action, for the modification
8 of any such Order, for the enforcement of compliance therewith, and/or for the
9 punishment of any violation thereof.

10
11 Respectfully submitted,

12 MACHAT & ASSOCIATES, P.C.

13
14 Dated: July 6, 2015

15 By: Michael Machat
16 Michael Machat, Esq.
17 Attorneys for Plaintiffs

18
19 **DEMAND FOR JURY TRIAL**

20
21 Plaintiffs hereby request a trial by jury on all issues raised by the Complaint.

22
23 Respectfully submitted,

24 MACHAT & ASSOCIATES, P.C.

25 Dated: July 6, 2015

26 By: Michael Machat
27 Michael Machat, Esq.
28 Attorneys for Plaintiffs